

286.8-120 Fees and charges in addition to interest -- Letters of commitment -- Failure to fulfill terms constitutes default.

- (1) Every mortgage loan company may require borrowers to pay all necessary and reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorneys' fees, abstract, recording and registration fees, title examination, title insurance, mortgage insurance, credit report, survey, drawing of papers, origination fees, loan closing costs, and taxes or charges imposed upon or in connection with the making and reporting of any mortgage.
- (2) Every mortgage loan company also may require the borrowers to pay the cost of all other necessary and incidental services rendered by the mortgage loan company or by others in connection with loans in reasonable amounts. Without limiting the generality of the foregoing, such costs may include the cost of services of inspectors, engineers, and architects.
- (3) Such initial charges as described in subsections (1) and (2) of this section may be collected by the mortgage loan company from the borrower and paid to any person rendering such services, or paid directly by the borrower.
- (4) In lieu of such initial charges to cover such expenses and costs as described in subsections (1) and (2) of this section, a mortgage loan company may make a reasonable charge, part or all of which may be retained by the mortgage loan company which renders such service, or part or all of which may be paid to others who render such services.
- (5) The fees and charges authorized by this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this Commonwealth which limits the rate of interest which may be exacted in any transaction.
- (6) No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company or mortgage loan broker require the payment of a fee greater than one hundred dollars (\$100) as a condition to submitting a loan application unless the executive director shall otherwise prescribe by rule.
- (7) All "letters of commitment," or any other contracts or agreements between prospective borrowers and a mortgage loan company or a loan broker, where the borrowers employ services, for a fee or commission, to obtain a loan commitment or funding from a lending institution shall indicate the terms and conditions thereof, including a full and detailed description of the services the broker or company undertakes to perform, a specific statement of the circumstances in which the broker or company will be entitled to obtain or retain consideration and the period that such agreement shall remain in effect.

- (8) Failure on the part of any party, with the exception of the borrower, to fulfill the terms of any loan commitment, letter of commitment, agreement, or contract for the loan of money within the time and on such terms specified therein, or the failure to make a bona fide effort to secure a loan after receiving a fee for such service, shall constitute default by the mortgage loan company and any other person so in default; and any person damaged by such default may sue at law or equity for damages, reasonable attorneys' fees and interest at the legal rate of interest under KRS 360.010. Every cause of action for damages under this subsection survives the death of any person who might have been a plaintiff or defendant. No person may sue under this subsection more than five (5) years after any act constituting default.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 197, sec. 12, effective July 15, 1998. -- Amended 1986 Ky. Acts ch. 461, sec. 15, effective July 15, 1986. -- Created 1980 Ky. Acts ch. 365, sec. 13, effective July 15, 1980.

Formerly codified as KRS 294.120.

Legislative Research Commission Note (7/12/2006). In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the Kentucky Financial Services Code, KRS Chapter 286.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.